

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BINGHAM FOX,  
RANDALL FOX,

Defendants.

NO. CR16-100RSL

ORDER GRANTING  
DEFENDANTS' MOTION TO  
COMPEL DISCOVERY OF  
REBUTTAL WITNESS

This matter comes before the Court on the motion of defendants Bingham Fox and Randall Fox to compel discovery regarding the government's expert rebuttal witness, Daniel Hardin. Dkt. # 113. The government hopes to present Mr. Hardin's expert testimony to rebut defense witness John Dixon's testimony about oil pollution compliance on fishing vessels. Defendants seek disclosure of a written summary of Mr. Hardin's expected testimony, including his opinions and the basis thereof.


The government responds, correctly, that rebuttal testimony is exempt from the pretrial disclosure requirements of Fed. R. Crim. P. 16(a)(1)(G). See United States v. Hankins, 539 F. App'x 757, 758 (9th Cir. 2013). At the same time, however, the ends of justice are best served by a system of liberal discovery, which gives both parties the maximum possible amount of information with which to prepare their cases and thereby reduces the possibility of surprise at trial. Wardius v. Oregon, 412 U.S. 470, 473 (1973). Applying this principle, the Ninth Circuit

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1 has granted habeas relief on the grounds that state procedural rules that imposed non-reciprocal  
2 expert witness disclosure obligations on a criminal defendant violated due process. See Camp v.  
3 Neven, 606 F. App'x 322, 325–26 (9th Cir. 2015) (“We conclude that allowing the State to  
4 present unnoticed expert rebuttal testimony when [the defendant] was required to disclose his  
5 own expert testimony on the same issues was a violation of [Wardius.]”). While the government  
6 cannot be expected to predict exactly what rebuttal testimony will be required of Mr. Hardin,  
7 neither can the government be permitted to prepare Mr. Hardin using details from defendants’  
8 Rule 16 disclosures without giving defendants “a meaningful opportunity to critique”  
9 Mr. Hardin’s testimony in return. See Camp, 606 F. App'x at 326.

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11 For the all the foregoing reasons, defendants’ motion to compel discovery of rebuttal  
12 witness Daniel Hardin (Dkt. # 113) is GRANTED. The government is hereby ordered to  
13 provide defendants with a written summary of Mr. Hardin’s expected testimony, including his  
14 opinions and the basis thereof. Mr. Hardin will not be barred from testifying beyond the scope  
15 of this summary to the extent that Mr. Dixon’s testimony requires him to do so in rebuttal.

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17 SO ORDERED this 16th day of March, 2017.

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20 Robert S. Lasnik  
21 United States District Judge  
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